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6 **BEFORE THE**
7 **BOARD OF REGISTERED NURSING**
8 **DEPARTMENT OF CONSUMER AFFAIRS**
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 2012-741

11 **SEAN DANIEL SCHINSTOCK**
12 **36916 Meadow Brook Way**
13 **Beaumont, CA 92223**

DEFAULT DECISION AND ORDER

14 **Registered Nurse License No. 752140**

[Gov. Code, §11520]

15 Respondent.

16 **FINDINGS OF FACT**

17 1. On or about June 15, 2012, Complainant Louise R. Bailey, M.Ed., RN, in her official
18 capacity as the Interim Executive Officer of the Board of Registered Nursing, Department of
19 Consumer Affairs, filed Accusation No. 2012-741 against Sean Daniel Schinstock (Respondent)
before the Board of Registered Nursing. (A copy of the Accusation is attached as Exhibit A.)

20 2. On or about June 17, 2009, the Board of Registered Nursing (Board) issued
21 Registered Nurse License No. 752140 to Respondent. The Registered Nurse License was in full
22 force and effect at all times relevant to the charges brought in Accusation No. 2012-741. The
23 registered nurse license expired on August 31, 2012. Section 2764 of the Code provides, in
24 pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to
25 proceed with a disciplinary proceeding against the licensee or to render a decision imposing
26 discipline on the license. Under section 2811, subdivision (b) of the Code, the Board may renew
27 an expired license at any time within eight years after the expiration.

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1 3. On or about June 15, 2012, Respondent was served by Certified and First Class Mail
2 copies of the Accusation No. 2012-741, Statement to Respondent, Notice of Defense, Request for
3 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
4 Respondent's address of record which, pursuant to California Code of Regulations, title 16,
5 section 1409.1, is required to be reported and maintained with the Board. Respondent's address
6 of record was and is:

7 36916 Meadow Brook Way
8 Beaumont, CA 92223

9 4. Service of the Accusation was effective as a matter of law under the provisions of
10 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
11 124.

12 5. On or about August 6, 2012, the aforementioned documents served by certified mail
13 were returned by the U.S. Postal Service marked "Unclaimed" with a forwarding address in
14 Nebraska.

15 6. On or about August 8, 2012, Respondent was re-served by Certified and First Class
16 Mail copies of the Accusation No. 2012-741, Statement to Respondent, Notice of Defense,
17 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,
18 and 11507.7) at Respondent's forwarding address which was:

19 128 N 13th St #1202
20 Lincoln, NE 68508

21 7. On or about August 14, 2012, the aforementioned documents served by certified mail
22 were delivered to the forwarding address in Nebraska and signed for on August 14, 2012.

23 8. Respondent failed to maintain an updated address with the Board and the Board has
24 made attempts to serve the Respondent at the address on file and at a forwarding address provided
25 by the U.S. Postal Service. Respondent has not made himself available for service and therefore,
26 has not availed himself of his right to file a notice of defense and appear at hearing.

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9. Government Code section 11506 states, in pertinent part:

(c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

10. Respondent failed to file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 2012-741.

11. California Government Code section 11520 states, in pertinent part:

(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent.

12. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on the relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as taking official notice of all the investigatory reports, exhibits and statements contained therein on file at the Board's offices regarding the allegations contained in Accusation No. 2012-741, finds that the charges and allegations in Accusation No. 2012-741, are separately and severally, found to be true and correct by clear and convincing evidence.

13. Taking official notice of its own internal records, pursuant to Business and Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation and Enforcement is \$732.50 as of September 5, 2012.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Sean Daniel Schinstock has subjected his Registered Nurse License No. 752140 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The Board of Registered Nursing is authorized to revoke Respondent's Registered Nurse License based upon the following violations alleged in the Accusation which are supported by the Default Decision Investigatory Evidence Packet in this case:

1 a. Respondent has subjected his license to disciplinary action under sections 490
2 and 2761, subdivision (f) of the Code in on or about August 9, 2011, in a criminal proceeding
3 entitled *People of the State of California v. Sean Daniel Schinstock*, in San Bernardino County
4 Superior Court, case number TSB1101157, Respondent was convicted on his plea of guilty of
5 violating Vehicle Code section 23152, subdivision (b), driving with a blood alcohol concentration
6 (BAC) of .08 percent or more, a misdemeanor, a crime that is substantially related to the
7 qualifications, functions, and duties of a registered nurse.

8 b. Respondent has subjected his registered nurse license to disciplinary action
9 under section 2762, subdivision (b) of the Code for unprofessional conduct in that on or about
10 February 27, 2011, Respondent used a combination of alcoholic beverages and prescription
11 medications to an extent or in a manner that was potentially dangerous and injurious to himself,
12 and to others in that he operated a motor vehicle while impaired.

13 c. Respondent has subjected his registered nurse license to disciplinary action
14 under section 2762, subdivision (c) of the Code for unprofessional conduct in that on or about
15 August 9, 2011, Respondent was convicted of an alcohol-related crime.

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ORDER

IT IS SO ORDERED that Registered Nurse License No. 752140, heretofore issued to Respondent Sean Daniel Schinstock, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on January 11, 2013

It is so ORDERED December 12, 2012


FOR THE BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS

DOJ Matter ID:SD2012703485

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

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10 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. **2012-741**

13 **SEAN DANIEL SCHINSTOCK**
14 **36916 Meadow Brook Way**
Beaumont, CA 92223

A C C U S A T I O N

15 **Registered Nurse License No. 752140**

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
21 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
22 of Consumer Affairs.

23 2. On or about June 17, 2009, the Board of Registered Nursing issued Registered Nurse
24 License Number 752140 to Sean Daniel Schinstock (Respondent). The Registered Nurse License
25 was in full force and effect at all times relevant to the charges brought herein and will expire on
26 August 31, 2012, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

- (a) Considering the denial of a license by the board under Section 480; or
- (b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board

1 may inquire into the circumstances surrounding the commission of the crime in order
2 to fix the degree of discipline or to determine if the conviction is substantially related
to the qualifications, functions, and duties of the licensee in question.

3 As used in this section, "license" includes "certificate," "permit," "authority,"
4 and "registration."

5 9. Section 2761 of the Code states:

6 The board may take disciplinary action against a certified or licensed nurse or
7 deny an application for a certificate or license for any of the following:

8 (a) Unprofessional conduct, which includes, but is not limited to, the
9 following:

10 (f) Conviction of a felony or of any offense substantially related to the
11 qualifications, functions, and duties of a registered nurse, in which event the record of
12 the conviction shall be conclusive evidence thereof.

13 10. Section 2762 of the Code states:

14 In addition to other acts constituting unprofessional conduct within the meaning
15 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person
16 licensed under this chapter to do any of the following:

17 (b) Use any controlled substance as defined in Division 10 (commencing with
18 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous
19 device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner
20 dangerous or injurious to himself or herself, any other person, or the public or to the
extent that such use impairs his or her ability to conduct with safety to the public the
practice authorized by his or her license.

21 (c) Be convicted of a criminal offense involving the prescription, consumption,
22 or self-administration of any of the substances described in subdivisions (a) and (b) of
23 this section, or the possession of, or falsification of a record pertaining to, the
24 substances described in subdivision (a) of this section, in which event the record of
the conviction is conclusive evidence thereof.

25 11. Section 2765 of the Code states:

26 A plea or verdict of guilty or a conviction following a plea of nolo contendere
27 made to a charge substantially related to the qualifications, functions and duties of a
28 registered nurse is deemed to be a conviction within the meaning of this article. The
board may order the license or certificate suspended or revoked, or may decline to
issue a license or certificate, when the time for appeal has elapsed, or the judgment of

conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

REGULATORY PROVISIONS

12. California Code of Regulations, title 16, section 1444, states:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

(b) Failure to comply with any mandatory reporting requirements.

(c) Theft, dishonesty, fraud, or deceit.

(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.

13. California Code of Regulations, title 16, section 1445 states:

(b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee.

COST RECOVERY

14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(August 9, 2011 Criminal Conviction for DUI on February 27, 2011)**

5 15. Respondent has subjected his license to disciplinary action under sections 490 and
6 2761, subdivision (f) of the Code in that he was convicted of a crime that is substantially related
7 to the qualifications, functions, and duties of a registered nurse. The circumstances are as
8 follows:

9 a. On or about August 5, 2011, in a criminal proceeding entitled *People of the*
10 *State of California v. Sean Daniel Schinstock*, in San Bernardino County Superior Court, case
11 number TSB1101157, Respondent entered a plea of guilty of violating Vehicle Code section
12 23152, subdivision (b), driving with a blood alcohol concentration (BAC) of .08 percent or more,
13 a misdemeanor.

14 b. On or about August 9, 2011, the court convicted Respondent on his plea, and
15 dismissed an additional count of driving under the influence of alcohol (Veh. Code, § 23152(a)),
16 and driving without a valid license (Veh. Code, § 12500(a)). As a result of the conviction,
17 Respondent was granted probation for 36 months, and sentenced to two days in jail, with credit
18 for two days. Respondent was further required to attend and complete a four-month First
19 Offender Alcohol Program, pay fees, fines, and restitution in the amount of \$1,840, and comply
20 with standard alcohol conditions.

21 c. The facts that led to the conviction are that on or about the evening of February
22 27, 2011, a California Highway Patrol officer observed Respondent driving in an unsafe manner
23 on Interstate 10 in the vicinity of North Loma Linda. After conducting a traffic stop, the officer
24 contacted Respondent at his vehicle. Respondent gave the officer a Tennessee driver's license,
25 and a temporary vehicle registration. Respondent stated that he had been living in California a
26 little over one year; the officer learned that Respondent was not licensed to drive in California.
27 The officer detected the odor of an alcoholic beverage emitting from within the vehicle;
28 Respondent's speech was thick and slurred, and his eyes were red and watery. Respondent

1 submitted to a series of field sobriety tests which he was unable to complete as explained and
2 demonstrated by the officer. Respondent provided two breath samples which were analyzed by
3 the preliminary alcohol screening test with a BAC of .188 and .176 percent, respectively.
4 Respondent was arrested for driving under the influence of alcohol. During booking, Respondent
5 provided two additional breath samples, which were analyzed with a BAC of .15 percent.
6 Respondent told the officer that he had also consumed 100 mg Seroquil, and 100 mg Trazodone,
7 which Respondent described as "sleep aids," and 20 mg Enderol approximately three hours
8 earlier. The officer found prescription bottles bearing Respondent's name in his vehicle.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Unprofessional Conduct - Use of Alcohol in a Dangerous Manner)**

11 16. Respondent has subjected his registered nurse license to disciplinary action under
12 section 2762, subdivision (b) of the Code for unprofessional conduct in that on or about February
13 27, 2011, as described in paragraph 15, above, Respondent used a combination of alcoholic
14 beverages and prescription medications to an extent or in a manner that was potentially dangerous
15 and injurious to himself, and to others in that he operated a motor vehicle while impaired.

16 **THIRD CAUSE FOR DISCIPLINE**

17 **(Unprofessional Conduct - Conviction of an Alcohol-Related Criminal Offense)**

18 17. Respondent has subjected his registered nurse license to disciplinary action under
19 section 2762, subdivision (c) of the Code for unprofessional conduct in that on or about August 9,
20 2011, as described in paragraph 15, above, Respondent was convicted of an alcohol-related crime.

21 **DISCIPLINARY CONSIDERATIONS**

22 18. To determine the degree of discipline, if any, to be imposed on Respondent, pursuant
23 to California Code of Regulations, title 16, section 1445, subdivision (b), Complainant alleges
24 that on or about June 1, 2001, in a criminal proceeding entitled *The State of Nebraska vs. Sean D.*
25 *Schinstock*, in the County Court of Thayer County, case number CR01-69, Respondent entered a
26 plea of no contest to the amended charge of willful reckless driving, in violation of Nebraska
27 Revised Statute 60-6, 214, a Class III misdemeanor, which dismissed the original charge of
28 driving under the influence of alcohol. As a result of the conviction, Respondent was placed on

1 probation for 180 days, ordered to pay fines and costs, and to provide proof to the court of
2 completion of an inpatient treatment program by September 1, 2001.

3 **PRAYER**

4 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
5 and that following the hearing, the Board of Registered Nursing issue a decision:

6 1. Revoking or suspending Registered Nurse License Number 752140, issued to Sean
7 Daniel Schinstock;

8 2. Ordering Sean Daniel Schinstock to pay the Board of Registered Nursing the
9 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
10 Professions Code section 125.3;

11 3. Taking such other and further action as deemed necessary and proper.
12

13
14 DATED: June 15, 2012

for Stacie Ben
LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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